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Puerto Rico's Political Status and Its Right to a Territorial Sea and Exclusive Economic Zone

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PUERTO RICO'S POLITICAL STATUS AND ITS
RIGHT TO A TERRITORIAL SEA
AND EXCLUSIVE ECONOMIC ZONE

by

Sandra M. Laureano

A Major Paper Submitted in Partial Fulfillment
of the Requirements for the Degree of
Master of Philosophy
in
Marine Affairs

University of Rhode Island

April 1980

ABSTRACT

When, in 1973, preliminary seismic studies were made in Puerto Rico, in order to site a nuclear plant, possible hydrocarbon deposits were delineated. This gave rise to the controversy of Puerto Rico's right to its offshore resources. How far out does Puerto Rico's right extend?

Puerto Rico is a "Commonwealth" since 1952, but this in no way helped to settle the matter because its definition and application have not been clearly established. What the government of Puerto Rico opted for was to base its claim on its Spanish tradition. The principal points of their argument were that, while Puerto Rico was a Spanish colony, it had been granted a maritime zone "as determined by the international law," and that when the U.S. invaded Puerto Rico in 1898, it had left in effect all previous laws. Two years later with the first organic act, some laws were changed or amended, but the laws pertaining to maritime jurisdiction and resources were in no way altered, or even mentioned. In general terms, Puerto Rico was given "control" over the submerged lands around the Island. In the preceding acts granted Puerto Rico, these laws were just referred to as being left "in force".

In the meantime, the Puerto Rican government had been updating the respective laws, amending corresponding sections as it became pertinent for exploration of the natural resources. During this period of time, from 1900, year of the first organic act, to 1950, year of the last, the United States had kept absolute control over the political processes in Puerto Rico. The President received yearly reports of all major events; all laws were sent to the U.S. Congress no later than 60 days after their approval; Congress retained veto power over the laws, and the President named all government officials from the governor to governmental heads. We can therefore conclude that there was complete knowledge of the laws that were passed. At no time were any of them repealed, vetoed or disapproved.

The U.S. government's position had been, until recently, that Puerto Rico's right was only three miles, the same as the states had. That in fact the "control" language used did not give "title" to those lands. On March 16, 1980, the President signed a law granting Puerto Rico right to a territorial sea of 10.35 miles or three marine leagues.

The reasons for this action are basically of a political nature. Among others is the fact that 1980 is an election year and that Puerto Rico had something it could trade off with the White House, political support for the President in exchange for a greater maritime limit. This decision will have its repercussions both at the political and economic level.

Puerto Rico's right to a territorial sea and an exclusive economic zone should be defined by international law standards. The controversy, in the context of Puerto Rico's status question, is what this paper is about.

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INTRODUCTION

Puerto Rico became involved in a controversy over its marine resources with the government of the United States in 1973. That was the year when possible hydrocarbon and natural gas deposits were discovered, off the northern coast, as a side effect of geological studies done for siting of a nuclear plant. Puerto Rico's right to its off-shore mineral resources had never been questioned by the U.S. government, there had never been the necessity. Meanwhile, the Puerto Rican government had been amending laws and regulations which it had inherited from the Spanish Empire. The controversy centered around determining whether Puerto Rico had a right to a territorial sea, equivalent to what the continental states and Hawaii had, or whether, because of its Spanish tradition its territorial sea was to be determined by current international customary law.

When the controversy started, the government of Puerto Rico was led by pro-commonwealth advocates, which were in the process of elaborating a Compact of Permanent Union between the United States and Puerto Rico.¹ In this compact they suggested that Puerto Rico's right be determined by international practice. By the time the compact reached the bill form this had changed to defining Puerto Rico's right as three marine leagues.

The election year of 1976 changed government composition and pro-statehooders became the new administrators. Their position with respect

¹This compact provided for a territorial sea and an exclusive economic zone although this latter concept was dropped when the compact was translated into a House of Representative Bill. Later petitions by the new administration to the U.S. government did not include provisions for an exclusive economic zone.

to maritime jurisdiction was that Puerto Rico could not ask for more than what had been achieved by the continental states which also had a Spanish tradition, mainly Texas and Florida.

Perhaps the most serious problem with any of these two positions, presented by commonwealth advocates or by pro-statehooders, is that they both subject Puerto Rico's right to United States Congressional approval. This of course limits Puerto Rico's right to whatever is in the interest of the federal government.

Hydrocarbon and natural gas deposits could mean positive change for Puerto Rico's unbalanced and dependent economy. For statehooders this would mean developing Puerto Rico from a near "welfare state" to a country economically ready for statehood; minimal unemployment, balanced budget, rich enough to pay federal taxes. But for other status seekers it means finally having the resources for developing equal relations with the United States, through an associated state. Independence advocates have always thought that Puerto Rico could be economically independent from the U.S. but with hydrocarbon deposits it would be much easier.

All three groups have at one time or another made recourse of international fora, mainly the United Nations Decolonization Committee, to expose their dissatisfaction with present U.S.-Puerto Rico relations. The statehood and independence advocates call the relations colonial while pro-commonwealth advocates, under whom this status to eliminate colonialism developed, call them not fully developed relations.

The commonwealth status, as we shall see, is a very vague concept which has never been clearly and completely defined. Since its creation in 1952, the courts have ruled contradictorily on how the principles of this new status are to be implemented and the U.S. government's position has

served many times to increase the confusion. While it has been some officials view that the new status gives Puerto Rico important powers, others understand that "fundamental relations" as established prior to 1952, have not changed. The differences between territories, associated states and commonwealths have become minimal over the years and the applicability of federal law has been, to say the least, inconsistent.

When the research for this paper was started, eight months ago, Congress had not yet taken a stand on the Puerto Rico maritime issue. Today, both Congress and the executive branch have decided what Puerto Rico's rights are. This paper will look into the political and economic background of Puerto Rico's development. It will then try to look into the contradictions and uncertainties of the commonwealth proceeding to investigate the legislative history of Puerto Rico with respect to its maritime jurisdiction, both under Spanish rule and United States rule. The paper includes a discussion of the motives of the Puerto Rican government and Puerto Rico's participation in international fora. Finally, the conclusions will analyze the results of the decisions taken and the options which Puerto Rico faces.

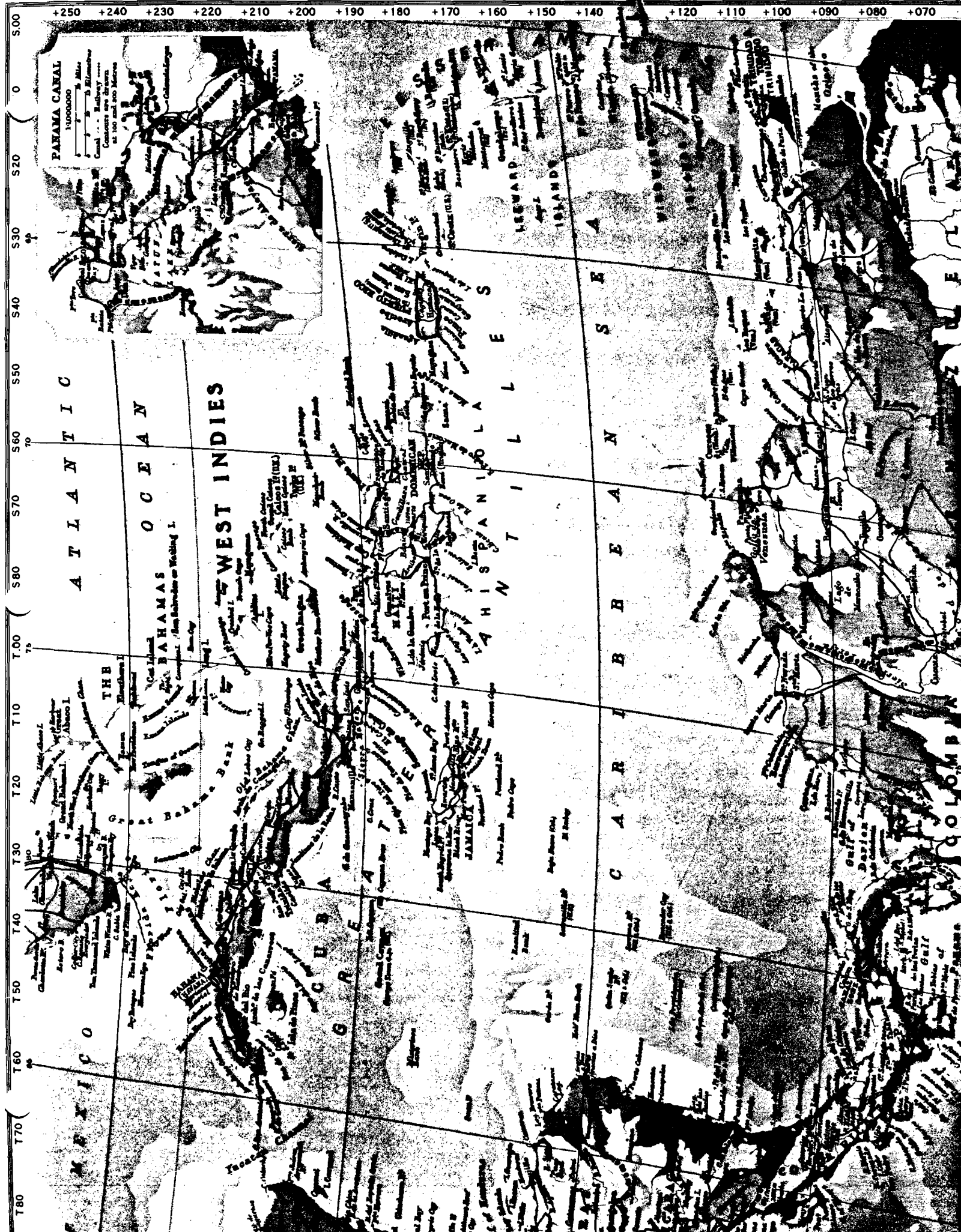
I. GENERAL BACKGROUND

A. Political Development

Puerto Rico is part of an island chain in the Caribbean, situated between the Dominican Republic to the West and the United States Virgin Islands to the east. The largest of the Puerto Rican islands is 36 miles wide and 111 miles long but it also has smaller islands with which it forms a geographical and political unit; Vieques, Culebra, Desecheo, Monito and Mona. (See map #1.)

Puerto Rico's native population, the Taíno Indians, basically a farming people, although they also fished and hunted, were colonized by Spain beginning on November 19, 1493. After discovering that the "eternal life" claimed by the whites' religion was not synonymous with immortality, the Taínos organized their resistance to the Spanish Empire, only to be hunted down and exterminated. From an original population of 50,000 in 1493 by 1514 there were only 3,000 Taínos and seven years later, only 600 Taínos had managed to survive persecution, white man's disease and the 16 hour work day at the gold mines.

In the middle of the 17th century, the economy of Puerto Rico shifted from mining to agriculture and the class structure changed from conquistadors, adventurers and miners to landowners, farmers, shopkeepers and artisans. The island was ruled by a colonial administration responsible to the Spanish Crown and by the wealthiest plantation owners and merchants who always returned to Spain.



Since 99 percent of the Indian population had been exterminated, a new, cheap supply of labor was necessary for economic development. Blacks were imported in large numbers and by 1553 there were 1500 black slaves in Puerto Rico and by 1830 there were 30,000. The first black revolt in Puerto Rico was in 1527 and they continued through the 19th century.

In the countryside, the surviving Taíno Indians, the fugitive black slaves and the poor white farmer from Spain intermingled and married and from that union the jíbaro was born. (In the Indian language jíbaro means "one who escapes to be free.") The Puerto Rican culture and language evolved from this mix of races.

Feudal Spain was economically backward, socially archaic; worldwide that was an age of economic, political and social revolution. Feudalism was buried, capitalism became triumphant and liberation wars broke out all over Latin America. The 19th century was the age of freedom for Mexico, Haiti, Venezuela, Colombia, Peru, Ecuador and Chile. Spain sought desperately to isolate Puerto Rico from the revolutionary process and wealthy planters, who were driven from these countries by the liberating armies, resettled in Puerto Rico and exerted a conservative influence on the islands' social and political life. (Puerto Rico is presently suffering this same phenomenon with the immigration of tens of thousand of conservative Cubans, fleeing the Cuban Revolution.)

Puerto Rican society was polarized; the wealthiest plantation owners, merchants and government bureaucrats formed the "Incondicionales," unconditionals in favor of the Spanish Empire; the smaller farmers and the professionals formed the "Autonomistas", they sought autonomy within the Spanish Empire; the separatist or "independentista" movement drew upon all

sectors of society, inspired by the revolutionary zeal of Latin American leaders. They wanted abolition of slavery and colonialism.

On September 23, 1868 a group of 400 revolutionaries overtook a central mountainous town and declared the Republic of Lares. The insurrection, known as El Grito de Lares, which was supposed to spread throughout neighboring towns, encountered numerous difficulties and the new Republic was short-lived. A few weeks after, the Cuban people also rose with their Grito de Yara, a rebellion which lasted ten years and served as the basis for the rebellion of the 1890's, which ultimately gave the Cuban people their freedom from colonial Spain, but which forced them under a neo-colonial American system.

In 1897, 29 years after Lares, Puerto Rico was granted autonomy in a desperate move from Spain to retain its colonies. The Autonomic Charter was mainly intended to avoid Cuban independence but it was also granted to Puerto Rico hoping it would have a deterrent effect on the Puerto Rican struggle for independence. In February 1898, the cabinet of the new autonomous Puerto Rican government was appointed; in March, general elections were held and in July, U.S. troops invaded and conquered the island.

As early as 1820 President James Monroe had announced that "Cuba and Puerto Rico are natural appendages of the U.S."¹ Secretary of State James G. Blaine had stated: "I believe that there are three non-continental places of enough value to be taken by the United States. One is Hawaii, the others are Cuba and Puerto Rico."² The United States government needed

¹Peoples Press Puerto Rico Project, Puerto Rico, The Flame of Resistance (San Francisco: Peoples Press, 1977), p. 28.

²Ibid.

a pretext, to intervene in the Cuban-Spanish War, and it made one of the blowing up of the U.S.S. Maine, but ultimately war with Spain would have come with or without this incident. In 1898, Massachusetts Senator Henry Cabot Lodge stated that "the island of Puerto Rico . . . had constantly been on the minds of the Army and Navy from the very moment the war had begun; and this war was to constitute the last step in a relentless movement begun by the United States a century ago to expel Spain from the Caribbean."³

The people of the United States, in the cause of Liberty, Justice and Humanity, have sent our armed forces to occupy the island of Puerto Rico . . . We have not come to make war upon the people of the country that for centuries have been oppressed, but on the contrary to bring you protection . . . to promote your prosperity, and to bestow upon you the advantages and the blessings of our enlightened civilization.

So said General Nelson A. Miles when the U.S. troops invaded Puerto Rico, but some Puerto Ricans resisted the aggression anyway, through military action in the mountains and political struggle in the cities.

On December 1, 1898, the United States and Spain signed the Treaty of Paris and Puerto Rico went to the Americans as the spoils of the Spanish-American War. The Phillipines, Cuba, which had become a U.S. protectorate, and Puerto Rico were all a source of valuable raw materials, cheap labor and markets for U.S. goods. Puerto Rico meant profits for the sugar, tobacco and other corporations and a stepping stone for the penetration of Latin America, as well as an important military base for Army and Navy expansionism.

³Ibid., p. 31.

Under American rule the Puerto Ricans received different Organic Acts establishing relations between the metropolis and its colony. The Foraker Act of 1900 gave the U.S. President the right to appoint the governor and the heads of governmental agencies. Most of these appointees knew no Spanish and were totally ignorant of the life, history and culture of the Puerto Rican people. The Jones Act of 1917 gave Puerto Ricans the American citizenship so that Puerto Ricans could be drafted for World War I. The creation of the commonwealth status in 1952 did not change the fundamental character of colonialism which has been characterized by political and economic domination, a superiority complex and racism at the cultural level, on the part of North Americans.

This situation has prompted the pro-independence forces to take up arms, at different moments, against the United States government, its Puerto Rican representatives and U.S. corporations. This was the case in 1950 when the Nationalist Party attacked the governor's house and tried to take control of various municipalities. In 1954, members of the same party attacked the U.S. Congress and the Blair House, where the president resided at the time. Since then, different revolutionary groups have tried to place the Puerto Rican colonial situation in such contradictory levels as to force a solution. With the rise to power of pro-statehood advocates in 1976, revolutionary activity has increased both in the United States and in Puerto Rico.

Trying to put an end to the status debate, a referendum was held in 1967 in which commonwealth received majority vote, but even this did not settle the question definitely. After some time, even the commonwealth advocates have joined independence forces in seeking a final solution through international fora. In 1978, the Decolonization Committee of the

United Nations, as well as its General Assembly, passed a resolution to the effect that the Puerto Rican people have a right to self determination and independence and that the U.S. refrain from taking irreversible action with respect to the natural resources and the destiny of the Puerto Rican people.

The position of the United States government is that the question of Puerto Rico's political future is strictly an American domestic issue, a quaint political notion that is reminiscent of similar claims asserted by European colonial powers during United Nations anticolonial hearings in the 1950's. The truth of the matter is that although the U.S. government has issued many statements proclaiming its commitment to the principle of self-determination, they have in practice ignored their responsibilities in settling the status question.

Presently, the United States faces a people who are overwhelmingly opposed to present U.S.-Puerto Rican relations. The alternatives seem to be three, statehood, association or independence, but in order for statehood or association to be a final solution to the status issue, independence has to precede them. This means that no referendum can be really binding on the Puerto Rican people unless it is held without the presence of U.S. military, political and economic pressures. This will require a transfer of powers to Puerto Rico previous to any plebiscite on the status question.

B. Economic Development

One of Puerto Rico's main economic characteristics has been, and is today, unequal development, a result of the confrontation at the time of the American take over, between a pre-capitalist Puerto Rican society and the monopolist state of the American economy. This confrontation developed within the political and judicial boundaries established by the Americans

and led to the imposition of the American market, customs, tariff system, coin and all other forms of colonial domination.

Under American rule, Puerto Rico became one big sugar plantation owned and operated by North American companies. The diversified agricultural economy declined and Puerto Rico became almost a one crop economy. Over several decades the coffee and subsistence farming were driven into bankruptcy and King Sugar reigned supreme. Over a 30 year period U.S. corporations ended controlling the Puerto Rican economy. In 1899, Puerto Ricans owned 90 percent of the farms and estates; by 1930, North American monopolies owned 65 percent of sugar production; three-fifths of all sugar lands were owned by four U.S. companies. From 1900 to 1930 U.S. monopolies extracted over \$200 million⁴ in profit from Puerto Rico.

From 1896 to 1928, the percentage of land devoted to sugar cane increased 263 percent, while the land devoted to food crops decreased 31 percent. Between 1901 and 1910, in an island 36 miles by 111 miles, the sugar corporations built more than one thousand miles of railroad, not to serve passengers but to carry cane. Between 1910 and 1940, employment in sugar increased tremendously, but employment in other forms decreased by almost half. In general, unemployment rose from 18 percent in 1910, to 20 percent in 1920, up to 30 percent in 1926 and as high as 40 percent in the midst of the depression of the 1930's.

In the late 1930's the United States government drew up a "Master Plan" for Puerto Rico. It called for the development of finance and industry, the growth of commerce, communications, transportation, centralization of resources, wage and price control, widespread construction and

⁴Ibid., p. 40.

the creation of an educational system which would guide this profound transformation. In 1942, under the guise of a "wartime emergency measure," the Puerto Rican Industrial Development Company was formed. With federal funds, the U.S. and Puerto Rican governments built a few factories that produced glass, paper, cement, ceramics and shoes. After the end of the war they were sold to private enterprise. By 1945, the outlines of an economic system had been defined.

The industrialization of the island took place over several decades; in 1947 there were only 13 American companies which provided 2,000 jobs. By 1950, there were 82 factories and by 1960, there were 717, in 1970, 2,000 American owned factories covered Puerto Rico. No colonial country has been industrialized as heavily and unevenly in as short a period of time.

The initial phase of this process was known as "Operation Bootstrap" and it was supposed to bring prosperity, jobs, money and a degree of independence from the United States. Instead, it brought hunger, and unemployment ran rampant, the cost of food was 27 percent higher than in the United States. Migration, a safety valve, which would never close, became wider. Migration to the United States had reached 250,000 Puerto Ricans by 1952, a number which rose to 1,700,000 by 1970. Today, 40 percent of the Puerto Ricans live in the U.S., but unemployment in Puerto Rico is again 35 percent or more.

The industrialization of the island burdened the Puerto Rican people with a double exploitation. As consumers of goods that were produced in the U.S. and imported to the island, the Puerto Rican people have 25 percent higher costs than the people of North America. As workers who manufactured goods that were exported to the U.S., Puerto Ricans have received one-third to one-half the wages of the North American workers.

Although, (after 1975) factory wages have ceased to be competitive with those in other developing countries, the average \$3.66 an hour is still only 61 percent of the United States average. And corporate profits in Puerto Rico are still shielded from federal tax collectors.⁵

During the 20th century, Puerto Rico has continuously suffered from the unequal development, which arises from the fact that its production process obeys laws and developments which take place out of its boundaries. In the first fifty years, the island was an exporter of sugar, tobacco, citrus fruits and unfinished needlecraft products to the U.S. market. Between 1950 and 1965, the economy was dominated by companies thriving in the apparels, textile, non-electric machinery, food and other light industries, whose finished products were also sent to the U.S. Since 1965, Puerto Rico has become a very important center for the production of gasoline and petrochemical raw materials for the U.S. market. Also in the 70's the island became one of the most important centers of the world for the production of chemicals, medicines and medical instruments. Since 1975, it has become even more obvious that the importation of capital as the basis for economic development has been a failure in Puerto Rico.⁶

After 81 years of American economic domination, of the 3.3 million Puerto Ricans living in Puerto Rico,⁷ 18 percent were estimated to be unemployed by Carlos Romero Barceló, Governor of Puerto Rico.⁸ The New York

⁵Herman Nickel, "Puerto Rico's Drift Towards Statehood--and Dependence," Fortune, August 13, 1979, pp. 163-176, p. 163.

⁶Neftali Garcia, "Summary of the Economic and Political Development in Oil Exploration in Puerto Rico--1975-1979," Corporate Examiner, September, 1979 (to be published by the Corporate Examiner).

⁷There are approximately 1.8 million Puerto Ricans in the United States, mainly in New York, but there are also large concentrations in New Jersey, Chicago, Ohio, Florida and California.

⁸See letter written by Carlos Romero Barceló to President Carter on January 18, 1978 with respect to marine jurisdiction and its economic impact.

Times, in an article written on January 1, 1977, estimated unemployment at more than 30 percent. Even the lower figure given by Romero means that Puerto Rico has a higher unemployment rate than any American state and three times the global U.S. rate.

The per capita income in 1976 was \$2,422 meaning, that from 50 to 60 percent of the population depending on which of the two sources is used, are under the poverty level. This per capita is 38 percent of the U.S. per capita and only 54 percent of the per capita of one of the poorest states in the mainland, Mississippi. Although more than 66 percent of the population is eligible for the Food Stamp Program, only 50 percent applied for the benefits in fiscal year (FY) 1978. In order to reach an acceptable rate of unemployment of 12 percent by 1985, the government will have to create 286,000 jobs, twice the total net increase in the last 25 years.

The U.S. government has pumped ever increasing amounts of federal assistance and loans to keep the economy from collapsing. From about \$1.3 billion in 1974, federal outlays increased to \$2.8 billion in 1976. In FY 1978, they were \$3.4 billion, more than \$1,000 for each of the island's 3.3 million residents, and more than a third of the island's \$8.9 billion gross product.⁹ The transfer programs and the developmental theories used until now, have not been adequate; something which is recognized even by American governmental officials. Jerry Jasinowski, the Commerce Department official in charge of the Krepps Report (see page 45) stated: "No matter how the data are presented, the statistics indicate that there are few

⁹Nickel, p. 168.

programs which are directly and specifically designed to promote economic growth."¹⁰

The Puerto Rican economy has not limited itself in contributing to the American economy. In addition to providing raw materials and cheap labor, Puerto Rico ranked second to none as a purchaser of U.S. goods, on a per capita basis. In 1977 Puerto Rico's annual purchase from the mainland has soared to more than \$3.9 billion.

Although the conventional wisdom has it that commonwealth status made possible Puerto Rico's economic miracle of the past quarter century, in fact the reverse is probably true, Puerto Rico's economic expansion made possible the islander's toleration of a political relationship with the United States that was not fundamentally different from the overtly colonial status that preceded it.¹¹

¹⁰Ibid., p. 174.

¹¹José A. Cabranes, "Puerto Rico: Out of the Colonial Closet," Foreign Policy, No. 33, Winter 1978, pp. 66-91, p. 81.

II. COMMONWEALTH STATUS

A. Historical Development

The Commonwealth of Puerto Rico came into existence in 1952, modeled after the strategy Great Britain developed for controlling its possessions and continue to exploit its previous colonial territories. The United States borrowed the strategy, added new variations, and slowly crushed the independence movement which had been gaining support. After the Nationalist Revolt of October 1950, Congress promptly passed Public Law 600, authorizing and directing Puerto Rican delegates to meet and draw up a constitution for the Commonwealth. The end product was a result of many years of negotiation, which had begun around 1942; where the United States had clearly expressed what it was willing to accept and what was not negotiable. Finally, the process culminated in a matter of two years and the Constitution of Puerto Rico created the "Free Associated State." Congress in fact had lengthy debates over what to name this new creation for fear that a name like "Associated Free State" would be misunderstood.

From the beginning, the "new" Puerto Rican status was viewed, both by the American government and by its Puerto Rican representatives as, "a long step reaffirming the leadership of United States . . . especially in Latin America." The Commonwealth of Puerto Rico, they claimed, would be "a model of trusteeship for the whole world."¹

¹Peoples Press Puerto Rico Project, Puerto Rico, The Flame of Resistance, p. 80.

With less than half of the eligible voters showing up at the polls, the constitution was approved by a vote of 375,000 to 83,000; Puerto Rican turnout at polls usually fluctuates between 85 percent to 95 percent. When the constitution reached Congress for its approval, Congress made approval conditional upon: first, deletion of a provision patterned after the United Nations Universal Declaration of Human Rights recognizing right to work, to obtain adequate standard of living, and social protection in old age or sickness; second, addition of a provision assuring continuance of private elementary schools; third, addition of a provision requiring an amendment to the effect that the Puerto Rican constitution must be consistent with the American Constitution.²

Even though independence was not included as an alternative in the 1952 referendum, the approval of the Constitution was used by American politicians and commonwealth spokesmen, to argue that the Puerto Rican people did not want independence. Such an argument was used by the United States representatives to the United Nations when they demanded that Puerto Rico be removed from the United Nations list of colonial possessions, and be declared a self-governing territory. The United States used this favorable vote to project itself as a friend to colonial countries of the world; Puerto Rico would be its "showcase" of democracy and economic progress.

Notwithstanding referendums, new names and United Nations votes, the reality is that commonwealth was just a new mode of colonial domination. This contradiction between appearances and reality is in part the cause for so much confusion as to the exact meaning of the term commonwealth. This

²Arnold H. Leibowitz, "The Applicability of Federal Law to the Commonwealth of Puerto Rico," The Georgetown Law Journal, Vol. 56, No. 2, December 1967, pp. 219-271, p. 223.

confusion was present even in the congressmen who had approved the Constitution, as was perceivable by Representative Joseph Mahoney of the House Committee on Interior and Insular Affairs, who in order to reassure his colleagues that Congress was not giving up its control over Puerto Rico explained: "The United States Constitution gives the U.S. Congress complete control, and nothing in the Puerto Rican Constitution could amend or alter that right."³ Also trying to clarify Puerto Rico's new status, Adolph A. Berle, the Assistant Secretary of State for Inter-American Affairs noted that "Puerto Rico has independence in everything except economics, defense and foreign relations."

In the Hearings before the United States-Puerto Rican Commission on the Status of Puerto Rico, the commonwealth was defined by most of those who attended as lacking power to control: immigration and emigration, radio and television broadcasting, communication, customs, commerce and the economy, air and marine transportation, bankruptcy laws, naturalization and citizenship, tariffs, currency, the mailing system, and the banking system. In addition, Congress has the power to recruit Puerto Ricans to war, maintains in Puerto Rico a Federal Court which tries and judges Puerto Ricans under federal laws and maintains an unlimited power of expropriation over our lands and properties.⁴

With the commonwealth status Puerto Rico acquired its own constitution (which cannot contradict the U.S. Constitution), its own government and legislature, the right to appoint its own judges, all cabinet officials, and the right to determine its own budget. The question that immediately

³Peoples Press Puerto Rico Project, Puerto Rico, The Flame of Resistance, p. 80.

⁴Ibid., p. 82.

comes to mind is what are they to govern? Over what shall they rule that has not been previously determined by the U.S. Congress? How fundamental are the issues they can determine? Even federal appropriations are pre-determined by Congress.

Perhaps a way towards understanding what exactly the commonwealth is meant to be, is by comparing it with other territories and possessions of the United States.

B. Territories and Associated States

First of all, let us distinguish between incorporated and unincorporated territories. Arnold Leibowitz, trying to explain the difference says: "It should be emphasized that the distinction between incorporated and unincorporated territories was created by the judiciary and was a way of preventing the word "territories" in the Constitution from having the same constitutional result in all areas."⁵ A legal difference between them is that the American Constitution applies fully to incorporated territories while only its fundamental provisions are applied to unincorporated territories.

In the Insular Cases of 1901,⁶ Justice White's opinion, with respect to whether Puerto Rico was incorporated or unincorporated, was that:

. . . the Treaty of Paris, pursuant to which Puerto Rico was acquired by the United States, did not provide for incorporation but left Congress to decide the Puerto Rican status. Since Congress has not acted positively, Puerto Rico is an unincorporated territory.

After the commonwealth was established, many of its advocates believed that Puerto Rico had finally become an incorporated part of the United

⁵ Leibowitz, p. 243.

⁶ For greater detail of what these cases were, see Leibowitz, p. 241.

States. But, as we shall see when we discuss the applicability of the federal law to Puerto Rico, this is not so. Trying to dilucidate the matter, the courts fell short of a real clarification when they stated:

When Congress uses the term "territory" in a statute, such may be meant to be synonymous only with "place" or "area" and not necessarily to indicate that Congress had in mind the niceties of language of a political scientist, who might say that Puerto Rico under its commonwealth status had ceased to be unincorporated "territory" of the United States.⁷ [Emphasis added]

In the opinion of R. Bowles,⁸ of the Office of Territorial and Insular Affairs of the Department of Interior, the main difference between territories, associated states and the commonwealth is that territories are "property of the United States, they are outright owned by the United States." This ownership is provided by the Constitution, Article 4, Section 3, Clause 2. On the other hand, both the associated state and the commonwealth were relations based on a "compact" between the United States and the country at issue. In both instances, the relationship is first spelled out in the compact and then it is either accepted or rejected by the countries. The "compact" between Puerto Rico and the United States, according to Mr. Bowles, was spelled out in the Puerto Rico Federal Relations Act. As we shall see later on in this paper, Puerto Rico was never "free" to accept or reject the mentioned act.

Asked to rate on a scale, the difference between the associated state and the commonwealth, Mr. Bowles noted that the associated state was considered an "almost free state" because it controlled its foreign relations,

⁷U.S. Code Annotated, Title 48: Territories and Insular Possessions, Chapter IV, Puerto Rico, § 731, 731B, 731C and 731D, pp. 89-91, p. 89.

⁸All of the opinions exposed hereafter were given to me through interviews which occurred February 29 and March 3, 1980.

its maritime boundaries and all other essential relations with the world, with the exception of defense, which would be handled by the United States. In the case of the Puerto Rican Commonwealth, Congress decided what would apply and what would not. It was following this principle that the Interior Department had decided to treat Puerto Rico "as if it were a state" and grant a territorial sea of only three miles.

Ana M. Rodríguez, legal counsel to the Resident Commissioner of Puerto Rico in Washington, expressed that the Commonwealth of Puerto Rico was closer to being a state than a territory, although, she did see it as a very ambiguous status. The applicability of the federal law was seen as very inconsistent, and one of the main results of the lack of a definite and clear concept of what the commonwealth status really meant.⁹

According to Jim Berney, of the Senate's Energy and Conservation Committee, previously the Territorial and Insular Affairs Committee, the difference that might have existed between the commonwealth and the territories has become insignificant during the last two years. During this time, the territories have acquired the right to elect their own governor, legislatures and judicial bodies. One of the remaining differences is that the territories pay federal tax while Puerto Rico does not.

Ariel Méndez, one of the legal counsels of the Office of the Commonwealth in Washington, said he believed the whole issue of defining the Puerto Rican status had been left up to the courts and that at different times, deciding over different issues, the Commonwealth had been defined as anything from a "state" to a "territory". Nonetheless, he thought there

⁹The actual Resident Commissioner, Baltasar Corrada del Río, is a member of the Puerto Rican New Progressive Party which favors statehood for Puerto Rico and which has denounced the colonial relations between the U.S. and Puerto Rico.

had been a change in the conception federal agencies had of Puerto Rico, "it's not a state but it definitely is no longer a territory."

No one really seems to know what exactly the Commonwealth is. About the only thing that these people seemed to be sure of is that whatever it is, the Commonwealth is a changing status which will have to be clearly defined in the near future.

C. The Applicability of Federal Law to Puerto Rico

Section 9 of the Puerto Rico Federal Relations Act, states that federal legislation, both existing and prospective, is not applicable to Puerto Rico where local conditions would make this undesirable. The scope of this "not locally applicable" exception for federal legislation is extremely unclear and no consistent rules have been formulated by the courts for its application.¹⁰ This situation is further complicated by the historic doctrine of "incorporated versus unincorporated" territories and by the imposition of the American citizenship on the people of Puerto Rico in 1917.

Prior to the 1950-1952 legislation, authorizing the establishment of the Commonwealth, Puerto Rico was unquestionably a territory of the United States. After 1952 things had apparently changed. The compact granting Puerto Rico Commonwealth status was at most, regulatory and did not change Puerto Rico's fundamental political relationship to the United States.¹¹

The representatives of this ambiguous status view it as unique in American law, "it is sui generis and its judicial bounds are determined by

¹⁰ Leibowitz, p. 219.

¹¹ U.S. Code Annotated, p. 89.

a compact which cannot change without the consent of both countries.¹² The word "compact" is brought in to sustain the Commonwealth with seemingly little concern as to its means of application or the need for refinement of the concept.

In addition to the ambiguity of the "compact" concept, there are two other instances where the applicability of the federal legislation could be challenged. First, where the federal statute does not mention commonwealth but indicates the statute shall apply "throughout the United States" or in "all the states, territories and possessions of the U.S." or similar language. Second, where the federal statute is sought to be applied to intra-commonwealth transactions.

Thus, it has been held that Puerto Rico would be considered a "territory" for the purpose of diversity statutes, would not be considered a "territory" for the purposes of the Federal Firearms Act and that Puerto Rico is a "state" for the purposes of the Investment Company Act of 1940. One court has suggested that, at least with respect to federal statutes passed after 1952, the failure to specifically mention the commonwealth of Puerto Rico may be taken as evidence of a congressional intention not to have the statute apply to Puerto Rico regardless of generality of language.¹³

Puerto Rico receives assistance under a variety of programs. There is no consistent pattern for this assistance; in some cases Puerto Rico is treated like a state, in others it is afforded special treatment. Thus, the poverty program (Economic Opportunity Act of 1964) defines a "state" to include Puerto Rico in Section 609, but treats Puerto Rico "especially" for

¹²Liebowitz, p. 222.

¹³Derecho de Puerto Rico, 1954, Supp. 420, pp. 421-422.

the purposes of the youth programs (Title I). The National Defense Education Program and the Elementary and Secondary Education Act of 1965 both treat Puerto Rico differently from a state.

The Commonwealth of Puerto Rico has not become a state in the federal union like the 48 states, but it has become a state within a common and accepted meaning of the word.¹⁴

It is within this lack of precision and clarity that the rights of the Puerto Rican people to a territorial sea and exclusive economic zone have been delimited. Not wanting to accept its colonial status, in all its manifestations, but being unable to define clearly its relation with the United States, has limited Puerto Rico's claim to a territorial sea and an economic zone.

Puerto Rico's claim was based on the legislation inherited from Spain and subsequent amendments unchallenged by the U.S. government. Puerto Rico's best interests have been traded off for political purposes, both by its own government and by the American government. This may be unperceivable to the Puerto Rican people, especially because of the lack of clarity with respect to United States-Puerto Rican relations and the ignorance as to the rights to which they are entitled.

¹⁴Mora V. Mejias, C.A. P.R. 1953, 206 F. 2d 377.

III. LEGISLATIVE HISTORY UNDER SPANISH RULE

When the Spaniards lost the Spanish-American War in 1898 they ceded all their colonial possessions to the United States through the Treaty of Paris, signed on December 10, 1898 and ratified by the United States President on February 6, 1899. Puerto Rico then became an American colony.

Under Spanish rule, Puerto Rico had been governed by Title I of the Spanish Constitution and by the Autonomic Charter which it had received by Royal Decree on November 27, 1897. The Charter, as stated in its exposition of motives was intended to keep Cuba, which had been involved in anticolonial war, within the Spanish metropolitan sphere of influence.¹ But like many colonialist powers, Spain gave its colonies too little too late.

The Autonomic Charter disposed that the "colonial houses" (legislature) would have the power to rule over all those issues specifically reserved for the "Courts of the Empire."² Among the things not under the control of the insular government were the laws pertaining to waters and the laws pertaining to ports. These were applied to Puerto Rico through the Spanish Civil Code, which was, in turn, made applicable by Royal Spanish Decree in 1889. The Code provided that mineral deposits were owned by the state, but could be exploited by private persons pursuant to concession

¹"Treaty of Paris," Exposition of Motives, p. 1.

²"Autonomic Charter," Title IV, Puerto Rico Annotated Laws, 1:7.

from the state (Art. 339), and subject to various conditions, one of which was compliance with the Spanish Mining Law of 1859.

This Mining Law was made applicable to Puerto Rico by Royal Order 563 in 1863, and it stated that all minerals which were the object of mining could not be "disposed thereof without a concession from the government," because the "ownership of said substances is vested in the state."³

The other important law which ruled Puerto Rico was the Spanish Law of Ports of 1880, made applicable to Puerto Rico in 1886. In Article I, it established as public property a maritime territorial zone which was defined as:

. . . the coastal space of maritime borders of the Spanish territory which are bathed by the sea in its ebb and flow, where tides are registered and higher waves during hurricanes where they are not.

. . . the littoral waters or maritime zone which surround the coasts or borders of the Spanish domain, in all its breadth determined by international law, with its inlets, nautical roads, bays, ports and other harbours used for fishing and navigation." [Emphasis added]

By the same decree of 1886, the Law of Waters of 1879, which superseded the Law of Waters of 1866, also became applicable to Puerto Rico and governed "territorial" waters. The Law of Ports, therefore, in language drawn directly from the Law of Waters of 1866, governed Spanish jurisdiction and claims in the "maritime" waters around the Island of Puerto Rico.⁴

Since the Law of Ports claimed as "national property" both the "littoral zone" and the "coast waters or maritime zone which girds the coasts of Spanish domain," the laws applicable to Puerto Rico in 1898

³Spanish Mining Law, Article 2.

⁴John A. Hodges and Peter B. Archie, "The Vested Rights of the Commonwealth of Puerto Rico to Authorize Exploration and Development of Minerals Underlying Its Offshore Submerged Lands," Memorandum from the Puerto Rican Government to the U.S. Government, Sept. 19, 1977, p. 4.

extended the claim of the state to minerals discovered in offshore submerged lands.

After the signing of the Treaty of Paris, the military government which occupied the Island of Puerto Rico were left with no alternative but to co-govern with the existing autonomic government, until they could set up one of their own. For a brief period they co-governed with Muñoz Rivera, which at that time led the autonomist government. By the Order of November 4, 1898, the United States promulgated the continuity of all existing laws. As we shall see, these laws continued in force and later served as the backbone for Puerto Rico's claim over its submerged lands and territorial sea.

IV. LEGISLATIVE HISTORY UNDER AMERICAN RULE

A. The Organic Acts and Related Documents

1. The Foraker Act of 1900

The first legislative enactment by the United States with respect to Puerto Rico was the Foraker Act of 1900, 31 Stat. 80. That statute in its Section 13 placed under the "control" of the government of Puerto Rico.

. . . all the properties which may have been acquired in Puerto Rico by the United States by the cession of Spain through said Peace Treaty . . . and all of that property, which at the time of the union belonged, under the Spanish laws then in force . . . but without including the surface of the ports or navigable waters, by the present statute will be under the control of the government established by this law, to be administered for the benefit of the people of Puerto Rico; and the legislature created by the present law shall have the authority to legislate with respect to these matters . . .

At the time of the American takeover, the Spanish Mining Law of 1859, as amended in 1868, was applicable to Puerto Rico. As noted above, this law proclaimed that all minerals belonged to the sovereign, but the minerals were subject to private discovery, development and alienation under permit granted by the sovereign. The Mining Law was in no way countermanded by an order issued by the military government from the time of conquest until the establishment of the civil government, following passage of the Foraker Act in 1900. The Puerto Rican legislature has taken no action to repeal the Mining Law and it seems not to be

otherwise inconsistent with federal law.¹ Accordingly, it can be concluded that the Mining Law remained in effect pursuant to the acquiescence of the Puerto Rican legislature and the provision of Section 8 of the Foraker Act, which preserved the civil law applicable to the treaty.

That the law and statutes of Puerto Rico currently in force, will continue in force, except in those cases in which they are altered, amended or modified by the present . . .

The duties and legal requirements that the Puerto Rican Commissioner of Interiors (see Foraker Act § 24) was to perform, with respect to the lands "placed under the control of the Puerto Rican government," were those imposed by pre-existing law, continued in force by Section 8 of the Act or by subsequent enactment of the Puerto Rican legislature.

While the Foraker Act clearly placed control of minerals (in terms of equating ownership) in the insular government, in much the capacity of a trustee, to act for the benefit of the people, it did not deal with the question of title to public lands nor did it specify any limit with respect to marine jurisdiction.

2. The Puerto Rican "Political Code" of 1902

Shortly after Congress passed the Foraker Act, the Puerto Rican legislature interpreted its authority as including dominion over minerals. Congress did not object to this interpretation. On March 22, 1902, the legislature adopted the Political Code of Puerto Rico,

¹While Section 13 of the Foraker Act reserved from control of the insular government "harbor areas or navigable waters," there is no necessary inconsistency between federal control over harbor areas and navigable waters for purposes of protecting the interests of navigation, commerce, and national defense, and Puerto Rican control over minerals in submerged lands underlying such harbor areas or navigable waters for the benefit of the people of Puerto Rico.

Section 133 of which established the general duties of the Commissioner of the Interior including "mines or minerals under the surface of private lands, public grounds, and public lands . . ." Plainly, the legislature of Puerto Rico did not thus regard mines or minerals as belonging to the United States.

Further, a Chief of Agriculture and Mines was established under the Commissioner of the Interior, to "have charge of all matters relating to agriculture and related industries, mines and minerals" (§ 134). Pursuant to this authority, it is very clear that from the outset of civil government, the Commissioner of the Interior undertook to administer the Mining Law, which, after several amendments over the years, is still in effect in Puerto Rico--for 75 years continuously proclaiming ownership of minerals by the people of Puerto Rico and providing for the beneficial use of the minerals for the people through mining and sale.

In Section 135 of the 1902 Political Code the Puerto Rican legislature granted the Commissioner of the Interior of Puerto Rico the power to lease or sell (with approval of the legislature) public lands generally. Thus, the legislature in 1902 must have regarded lands placed in their "control" as having been "granted" to Puerto Rico.

One house of the Puerto Rican legislature at this time was composed of an "Executive Council," which was also the Governor's Cabinet, all members of which were appointed by the President of the United States (Foraker Act, § 18,24). The President also appointed the Governor, who had veto power over legislative enactments (Foraker Act, § 17). The Congress of the United States was provided a copy of all laws passed, within sixty days after the legislative term ended, and reserved for

itself the power to annul any such laws. Additionally, the President received a detailed report of the activities developed by the Governor and each governmental department during the year. The American government was fully aware that the Puerto Rican government was equating control with ownership and did nothing about it.

3. The Act of Congress of
July 1, 1902

Subsequent to passage of the Foraker Act, considerable confusion still remained in Puerto Rico regarding the legal title to public lands. Puerto Rican authorities, relying upon the Spanish Civil Code, claimed that legal title to "public lands" within Puerto Rico resided with the Puerto Rican government. Their argument was based on Articles 339 and 340 of the Civil Code, which existed prior to the Spanish cession of Puerto Rico to the United States, and which was continued in effect thereafter by Section 8 of the Foraker Act. These provisions distinguished three different kinds of property owned by the government:

- (1) that destined for "public use" (such as roads and bridges);
- (2) that destined for "public service" (such as fortresses and mines); and
- (3) "all other property belonging to the state."

Categories 1 and 2 were considered by the Civil Code to be "property of public ownership" and presumably passed to the United States under the provisions of Article VIII of the Treaty of Paris. However, property in category 3 was considered by the Civil Code to be "private property," even though owned by the state, meaning that it could be conveyed by the state to private persons. It was argued that category 3 included those lands that are termed in the United States "public lands" and

that such lands did not pass to the United States under the Treaty of Paris, but that unfettered ownership was retained by the Puerto Rican government. Given the uncertainty as to legal title, clarification was needed to avoid delay in putting these "public lands" to beneficial use, either by the government or private developers.

The United States Secretary of the Interior, Mr. Knox, rejected the Puerto Rican claim in an opinion dated March 19, 1902. See Op. Atty. Gen. 8 (1902). Puerto Rico had acquired no status independent of Spain prior to 1898, he stated, and hence Puerto Rican public lands were public lands of Spain which were ceded to the United States by the Treaty of Paris.

The Interior Secretary's opinion did not resolve the controversy to the satisfaction of everyone concerned. Accordingly, by Act of July 1, 1902 (32 Stat. 731), Congress "granted" to the Puerto Rican government those public lands and buildings which the President did not find to be necessary to reserve to the United States; the President had one year to make such reservation. (President Roosevelt made three reservations in 1903.) The granted lands were "to be held or disposed of for the use and benefit of the people of said island." The grant, however, expressly reserved "harbor areas and navigable streams and bodies of water and the submerged lands underlying the same . . ."

The Senate report makes clear that the sole reason for the amendment was to assure exclusive federal jurisdiction over harbor areas, so as to prevent the island's government from imposing heavy landing charges upon vessels disembarking goods at the San Juan waterfront.²

²See S. Rep. No. 1954, 57th Cong., 1st Sess. (1902).

At a later date (1913), the Supreme Court established, that the effect of the Foraker Act ("control") and the 1902 Act ("grant") was to "cede title" to "all" of the property acquired from Spain with the stated exceptions; referring to lands excepted from the 1900 and 1902 Acts as well as the presidential reservations of 1903.

Any further ambiguity concerning the status of minerals in submerged lands was clarified by Congress in 1917.

4. The Jones Act of 1917

In Section 7 and 8 of the 1917 Organic Act, 39 Stat. 951, 48 U.S.C. § 747 et seq., Congress restated its previous transfers of control over certain property.

Section 8 states:

That the harbor areas and navigable streams and bodies of water and submerged land underlying the same in and around the Island of Puerto Rico and the adjacent islands and waters, now owned by the United States and not reserved by the United States for public purposes be, and the same are hereby, placed under the control of the Government of Puerto Rico, to be administered in the same manner and subject to the limitations as the property enumerated in the preceding section . . .

The preceding section, Section 7, stated that all property was to be "administered for the benefit of the people of Puerto Rico." It also provided for the control by the Government of Puerto Rico of all property, public lands and buildings not reserved by the United States for public purposes; it granted the Puerto Rican legislature the authority "to legislate with respect to all such matters as it may deem advisable." It is in this section that the concept of territorial limits is used for the first time in organic acts given to Puerto Rico, although there is nothing in the Act which defines a specific limit.

. . . the President may from time to time, in his discretion, convey to the people of Puerto Rico such lands, buildings or interests in lands or other property now

owned by the United States and within the territorial limits of Puerto Rico as in his opinion are no longer needed for purposes of the United States. And he may from time to time accept by legislative grant from Puerto Rico any lands, buildings or other interests or property which may be needed for public purposes by the United States. [Emphasis added]

Not having the United States determined the territorial limits of Puerto Rico; we can assume that the limits referred to in this section are those obtained under Spanish rule. As we have stated previously, these limits extended "throughout the width determined by international law."

The list of types of property, placed under the "control" of the Puerto Rican government, by Section 7, is identical to the list in Section 13 of the Foraker Act, with the addition of "public lands and buildings," which were "granted" to Puerto Rico by the 1902 statute. Where these concepts thought to be equivalent? And if they were not why is it that the United States could "accept . . . land, buildings or other interests?" Can a state give that which it does not own?

After adoption of the Jones Act, Congress clearly regarded Puerto Rico as owning submerged lands. Less than six months after passage of Jones Act, Congress appropriated funds for the repair and improvement of various harbor facilities. The project in San Juan harbor contemplated dredging the bay, with the material recovered to be used to reclaim adjoining swamp lands. The Committee Report stated:

That in consideration of the values which will be created by the reclamation of swamp lands, the insular government, as owners of said swamp land, be required to reimburse the United States the cost of the work . . . (Document No. 865, House of Representatives, 63rd Cong., 2nd Sess. 1917).

5. The Puerto Rican Federal Relations Act of 1950

Sections 7 and 8 of the Jones Act were explicitly continued in effect as part of the Puerto Rican Federal Relations Act, by Public Law 600 in 1950 (64 Stat. 319). In this act Congress repealed Sections 23, which required the Governor of Puerto Rico, within 60 days, after the end of each session of the Puerto Rican legislature, to transmit to the Executive Department of the United States Government all laws enacted during the session; and Section 34, which provided that all Puerto Rican laws had to be reported to Congress which had reserved the power to annul them.

It was with this act that the Puerto Rican legislature was given the express authority from Congress for doing what it had been previously doing without their specific consent; legislating with respect to submerged lands, providing for exploration and exploitation of minerals. The Puerto Rican legislature frequently exercised its authority to legislate with respect to minerals underlying "control" lands, and the executive branch had implemented such legislation. At no time had Congress or any branch of the federal government indicated any disapproval, as we have mentioned before, and more yet duly authorized officers representing the federal government have accepted deeds to said lands from the Government of Puerto Rico.

B. Previously Exercised Authority

1. The Spanish Mining Law

As observed above, the Spanish Mining Law, continued in effect in Puerto Rico by Section 7 of the Foraker Act, and Section 57 of the

Jones Act,³ was implicitly approved by the Puerto Rican legislature in the 1902 Political Code, and was continuously enforced by the Puerto Rican Commissioner of the Interior.

In 1933 the Puerto Rican legislature enacted Law No. 9: "To amend and reenact the Spanish Law of Mines of July 6, 1859, as amended by act of March 4, 1868." In Section 1 and 2 it provided that "all inorganic, metallic, combustible or saline substances" which were the object of mining that "ownership . . . is vested in The People of Puerto Rico, and no one may dispose of the same without a government grant . . ." (Laws of Puerto Rico 32, §§ 1, 2 (1933)).

The Mining Law was further amended on March 29, 1946, "to amend the title and Section 2 of Act No. 9 of August 18, 1933 . . ." The title would now read:

An act to amend . . . to define the mineral resources of Puerto Rico; to fix the property rights, private and public, therein; to regulate the use and exploitation of said resources by private persons and entities and by The People of Puerto Rico and its instrumentalities; to grant The People of Puerto Rico, through the Puerto Rico Development Company, the exclusive right in the exploitation of deposits of certain mineral substances . . .
[Emphasis added]

In the amendment of Section 2, the phrase territorial limitations is used without further explanation of its meaning. Although the context within which it is used, and how the law was enacted in 1933 suggests it refers to land boundaries, possible reference to marine territorial limits cannot be completely ruled out. In which case, the limit would follow historical definition, according to

³Sec. 57 provided "that the laws and ordinances of Puerto Rico now in force shall continue in force and effect, except as altered, amended or modified herein . . ."

international common law. (It might be useful to remember that these amendments were passed a year after the Truman Proclamation which definitely created a greater awareness of the importance of marine resources.) Section 2 of the amended law reads:

Such investigations and explorations (for oil and gas) shall be made by the People of Puerto Rico through the Puerto Rico Industrial Development Company, directly, and said Company is hereby authorized and directed to make such investigations and explorations, in any part of the Island where, in its judgment, it may be most advisable, and beneficial, without requirement of complying with the subsequent provisions of this act, especially in regard to permit applications, grants, payment of fees, and territorial limitations. In case it discovers the aforesaid deposits, the company shall exploit the same in the most advisable, efficient and advantageous manner it may determine." Law No. 242, L.P.R. 480 (1946). [Emphasis added]

The Mining Law was further amended through Act No. 426 on May 15, 1950 to read as follows:

Such investigations and explorations . . . and said company is hereby authorized and directed to make such investigations and explorations, in any part of the Island, its maritime zone, territorial waters, and adjacent islands, where in its judgment, it may be most advisable and beneficial . . . [Emphasis added]

The concepts of maritime zone, and territorial waters were not defined in the Act but their natural boundaries, east and west, would be of course where they reach the neighboring countries waters, the Virgin Islands and Dominican Republic. The territorial waters north and south were not in any way defined. As we have said before, Puerto Rico forms a political and geographical unit with smaller islands which surround it; Vieques, Culebra, Desecheo, Monito and Mona, which in this case are the adjacent islands.

It is clear that by now the Puerto Rican legislature had asserted the right of the Puerto Rican people to the ownership of the resources

located anywhere on its land or in its maritime zone.

The Mining Law has been subsequently amended and it was on October 10, 1975 with Law No. 10 that the concept of territorial sea reached its widest range.

Ownership of the commercial minerals found in the soil and subsoil of Puerto Rico, its adjacent islands and in surrounding waters, and submerged terrains next to their coasts up to where the depth of the waters allows for their exploitation and utilization, belongs to the Commonwealth of Puerto Rico, which may exploit the same or authorize their exploitation by other persons . . . [Emphasis added]

The concepts of "up to where the depth of the waters allows" provides for a much wider margin for delimitation of territorial sea. Up until now, all amendments made to the Mining Law had increasingly given Puerto Rico greater flexibility to determine its territorial sea according to international common practice; leaving enough legal space for this delimitation to increase as international practice changed.

In the amendment to the Law of Mines of April 4, 1979, the phrase "to an extension no less than three marine leagues," was added after the phrase "up to where the depth of the water allows for their exploitation and utilization." The marine league is defined as 5,556 meters, 3.45 terrestrial miles or three nautical miles. The reasons for giving up what could have been a larger territorial sea are of a political nature and will be discussed later in this work.

2. Congressional Approval

On May 26, 1960, the Assistant General Counsel of the Department of Agriculture, concluded in a legal memorandum that, although forest lands in Puerto Rico had been acquired by the federal government, with the approval of the National Forest Reservation Commission, the title

to minerals beneath the surface of such lands resided in the Commonwealth of Puerto Rico.

In at least two instances in 1939 and 1951 "the People of Puerto Rico" deeded to the United States, tracts of "submerged lands." The deeds recited that the grantor (Puerto Rico) "is in possession, free of all liens, encumbrances, defects, mentions or reservations whatsoever" of the property.⁴ These deeds clearly evidence that submerged lands belong to the people of Puerto Rico, that the legislature of Puerto Rico is authorized to deal with such lands and that the United States, in these instances as in all others discussed herein, acknowledged this fact.

While laws were being amended and lands granted, both Sections 23 and 34 of the Jones Act were in effect, it was not until the approval of the Puerto Rican Constitution in 1952 that they were eliminated. In the meantime these laws were submitted to the United States Congress and were subject to its annulment, but none were in effect annulled, nor did Congress in any way manifest its disapproval.

In the *People of Puerto Rico v. American R. Co. of Puerto Rico* (254 Fed. 369, 1st cir.) the Court of Appeals opined:

It is to be presumed, we think, that the local Puerto Rican legislation was reported to Congress, or at least, that Congress was cognizant of such legislation, and in the absence of affirmative action by that body, that there was Congressional acquiescence.⁵

⁴John A. Hodges and Peter B. Archie, "The Vested Rights of the Commonwealth of Puerto Rico to Authorize Exploration and Development of Minerals Underlying Its Offshore Submerged Lands," Memorandum from the Puerto Rican Government to the U.S. Government, Sept. 19, 1977, pp. 35-36.

⁵Lynn Coleman, "Brief in Support of Puerto Rico's Right to Authorize Exploration for and Development of Minerals in Offshore Submerged Lands," 1977, Mimeograph, 60 pages, p. 38.

C. Puerto Rico and Its Control Over Submerged Lands

In 1953, Congress and the Supreme Court tried to resolve the controversy concerning the rights of states and territories to offshore submerged lands.

The Supreme Court decisions, in the United States v. California, 332 U.S. 19 (1947), United States v. Louisiana, 339 U.S. 707 (1950), all holding federal claims to ownership of submerged lands paramount to the conflicting claims of the respective states, are in no way inconsistent with Puerto Rico's rights. With respect to Puerto Rico, the United States exercised such paramount rights by the Jones Act in 1917, which explicitly placed submerged lands under control of the Puerto Rican government by language and under circumstances clearly indicating that the people of Puerto Rico were the beneficial owners of all such "control" lands and properties, including minerals underlying submerged lands.

Thus, the significant difference between the earlier Supreme Court cases and Puerto Rico's situation is that, unlike Puerto Rico, California, Texas and Louisiana had not, as of the dates of those decisions, received a Congressional grant of authority over submerged lands.

1. The Submerged Lands Act of 1953

In 1953, reacting to the Supreme Court's decisions, supra, Congress enacted the Submerged Lands Act. The statute granted to the states, defined as "any state of the union," exclusive ownership of certain "lands beneath navigable waters" adjacent to their coasts and of "the natural resources within such lands and waters."

The subject of Puerto Rico's jurisdiction and control over its submerged lands was considered by Congress even though Puerto Rico already had ownership of its submerged lands. In a letter to Senator Joseph

O'Mahoney, Chairman of the Senate Committee on Interior and Insular Affairs, dated June 8, 1951, the Attorney General of Puerto Rico reviewed the Spanish Law and the Jones Act and concluded:

As it will be observed, Section 8, supra, places the submerged land in and around the Island of Puerto Rico under the control of the government of Puerto Rico, and Sections 7 and 8, together, confer upon the legislature of Puerto Rico general legislative power and discretion concerning Puerto Rican waters.

* * *

In my opinion the power conferred upon the Legislature of Puerto Rico over Puerto Rican waters remains unaltered under the decisions cited above [United States v. California, 332 U.S. 19 (1947), United States v. Louisiana, 339 U.S. 667 (1950), and United States v. Texas, 339 U.S. 707 (1950)]. The rule established by such decisions to the effect that the marginal sea is a national and not a state concern, and that national rights are paramount in that area, yield, in the case of Puerto Rico, to the express declaration made by Congress in the Organic Act of 1917 with respect to the control and dominion of Puerto Rican waters.

One of the main differences between the Submerged Lands Act and the equivalent provisions in the Jones Act, given Puerto Rico is that the Submerged Lands Act for the States of the Union reserved

the rights of the United States to the natural resources of that portion of the subsoil and seabed of the continental shelf lying seaward and outside of (the territory granted to the states), all of which natural resources appertain to the United States is confirmed.

The provisions granting Puerto Rico control contained no similar reservations.

2. The Territorial Submerged Lands Act of 1963

Five years after passage of the Submerged Lands Act of 1953, a question arose regarding ownership of tidelands and submerged lands off the coast of Guam. The Solicitor of the Interior Department noted that the Submerged Lands Act of 1953 was limited to the states and

concluded that the rationale of the United States v. California, supra, made plain that ownership of such lands contiguous to United States territories still resided in the United States. The Solicitor recognized that Congress could transfer title to such lands, and noted that Congress had in fact granted Guam "control" of certain federally owned properties. However, no specific mention was made of submerged lands. Thus, the assertion by Guam's Legislature that it was the "owner of all lands below tidewater" was dismissed as beyond Guam's Legislature authority. See Rights of Abutting Upland Property Owners to Claim Title to Reclaimed Land Produced by Filling in Tide-lands and Submerged Lands Adjacent to the Territory of Guam, 65 I.S. 193 (1958).

In direct reaction to the Interior Department's opinion in the Guam case, Congress in 1963 enacted the Territorial Submerged Lands Act, 48 U.S.C. § 1701 et seq. This statute applied only to Guam, American Samoa, and the Virgin Islands; Puerto Rico was not mentioned.

In 1974 Congress again turned its attention to submerged lands contiguous to United States territories by enacting Public Law 93-435 (88 Stat. 1210), which repealed certain limiting provisions of the Territorial Submerged Lands Act. Again, Puerto Rico was not mentioned.

The legislative history of this statute conclusively affirms that Congress believed Puerto Rico already had the right to explore and develop the minerals under its submerged lands.

Antonio V. Won Pat, Guam's House Delegate, testified before the House Subcommittee that title to the submerged lands of the territories "presently rests with the U.S. Department of Interior" and that this situation "is in direct contrast to that which exists in coastal

states and Puerto Rico, all of which hold title to their own offshore areas."⁶ [Emphasis added]

In a letter to the House Committee on Interior and Insular Affairs dated September 24, 1973, Mr. John Kyl, Assistant Secretary of the Interior, stated in support of the bill:

H.R. 6775 would transfer to the territories of Guam, the Virgin Islands and American Samoa the title of the United States to tidelands and submerged lands surrounding the three territories and the responsibility for administering those lands, with certain exceptions.

A similar action was taken by the Congress with respect to the coastal states in 1953. (See the Submerged Lands Act, 43 U.S.C. § 1301.) In addition, Puerto Rico, pursuant to 48 U.S.C. 749, controls the submerged lands around the islands of Puerto Rico. We see no reason the territories should not be given property rights comparable to the rights previously given these other areas. S. Rep. No. 1152, 93d Cong., 2d Sess. 4 (1974). [Emphasis added]

Finally in summarizing the background and need for the legislation, both House and Senate Reports contained the following language:

The territories of Guam, the Virgin Islands, of self-government, currently are denied the ownership and control of their submerged coastal lands. While the coastal states and Puerto Rico enjoy such ownership and control, the submerged lands of Guam, the Virgin Islands, and American Samoa are owned by the federal government and administered by the Department of the Interior. S. Rep. No. 1152, 93d Cong., 2d Sess. 2 (1974); H.R. Rep. 902, 93d Cong., 2d Sess. 2 (1974) [Emphasis added]

⁶Hearings on H.R. 6775, H.R. 4696, and H.R. 6135, to Place Certain Submerged Lands Within the Jurisdiction of the Government of Guam, the Virgin Islands, and American Samoa, and for Other Purposes, Before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 93d Congress, 1st Sess. 37 (1973).

V. PUERTO RICO'S GOVERNMENTS POSITION

A. Historical Perspective

Puerto Rico's awareness of the importance of its marine resources was slow in its development and much more so was its perception of the importance of the Third United Nations Law of the Sea Conference (UNCLOS III). In Puerto Rico and the Sea, An Action Program for Marine Affairs, a report submitted to the Governor of Puerto Rico in 1972, there was no mention of UNCLOS III. Puerto Rico's first participation in that conference was in Caracas in 1974. To the session celebrated in Geneva during 1975 no Puerto Rican attended, for reasons which are out of the scope of this paper to discuss. The pro-commonwealth government at that time was dedicating all its resources to the elaboration of the "Compact of Permanent Union Between Puerto Rico and the United States." A compact project which was the result of the 1967 Plesbicite, celebrated to resolve the status question. The commonwealth reaped the majority of votes and pro-commonwealth advocates were seeking greater autonomic powers. Richard Nixon named an Ad-hoc advisory group to "develop maximum self-government and self-determination within the commonwealth."

With respect to maritime jurisdiction the Compact proposed that:

The proposed definition of the jurisdictional scope of the Free Associated State simply and directly states the historical reality and established Puerto Rican jurisdiction over the seas adjacent to the Island in conformity with the international law of the sea. The record is clear that the effect of the Advisory Group's proposal is not to freeze Puerto Rican jurisdiction in terms of present international agreement, but to provide a flexible designation understood in the law of the sea:--territorial . . . at this particular juncture means those seas which are normally conceived of as part of the responsibility of the body politic . . . be they three miles, be they twelve miles,

be they the 200 miles that is being claimed. So [the purpose is to] make distinction between . . . free seas and territorial seas.¹ [Emphasis added]

When the Compact finally reached the form of a bill (H.R. 11200), the equivalent section read as follows:

All rights, title and interest of and jurisdiction and authority over the navigable waters of Puerto Rico . . . to the same extent that such right, title and interest . . . [as] assigned to the States of the Union . . . For purposes of this section, the rights of Puerto Rico in the natural resources of the seas and submerged lands adjacent to its coastline on the date of enactment of this Act, shall extend to a distance of three leagues.² [Emphasis added]

The Puerto Rican part of the Ad Hoc group, made up of pro-commonwealth advocates, had obviously traded its marine resources, for small concessions, to a more powerful American counterpart. In 1972 with President Ford's administration, the Compact was put away, never to be discussed again. When his term in office was close to expiring, President Ford manifested his preference for statehood; up to the present moment he has been the first and only president to openly favor statehood.

Then came 1976, an election year. For Puerto Rico a pro-statehood government; for the United States, a president which had been supported by pro-statehooders and which owed them some sign of gratitude. No longer did the United States White House incumbent want "to develop maximum self government and self determination within the commonwealth," as President Nixon had wanted. Now after President Ford's statement, statehood could be more openly supported, ways in which statehood could be gradually developed, was the thing to look for. Bill H.R. 11200 was forgotten and

¹Public Record of the Ad Hoc Advisory Group on Puerto Rico, Transcript of Proceedings, Thursday, July 10, 1975, p. 32.

²Section 7, § b.

although no new Ad Hoc Advisory Group for Statehood was formed, the governor's petition for a feasibility study of statehood was answered with an economic study of Puerto Rico. Juanita Krepps and the Commerce Department study became one of the topics of Puerto Rican politics.

The new administration in Puerto Rico did not drop the territorial sea issue, it approached it a different way. In the first session of the 95th Congress, the Resident Commissioner presented, in conjunction with Phillip Burton, bill H.R. 7827. The equivalent section read the same as H.R. 11200 with the following difference: Where H.R. 11200 read:

. . . shall extend to a distance of three leagues. The boundary so established shall remain fixed regardless of any possible accretion or reliction, but shall recede proportionately with any erosion.

H.R. 7827 read:

For the purpose of this Act, the boundaries of the Commonwealth of Puerto Rico shall extend from the coastline of the Island of Puerto Rico and the adjacent islands as heretofore or hereafter modified by accretion, erosion or reliction, seaward to a distance of three marine league . . .

Puerto Rico's government main drive consisted of trying to gain support for the project, something that did not come easy. After some time, the strategy was shifted from Congress to the White House. The Puerto Rican government started seeking a Presidential Proclamation with respect to Puerto Rico's right to its territorial sea. White House aides were not specially attracted to having the President "give out" more territorial sea than any state had ever achieved, except through a court battle. The Office of Management and Budget was especially against the idea.

A Presidential Proclamation has its drawbacks and in this case serious ones. First of all, the President is not powered to transfer lands, so

that any such transfer of Puerto Rican lands to the Puerto Rican government would have surely met with court action. Usually, a Presidential Proclamation is issued to clarify an issue which is not clear; it therefore can become a very subjective matter. Establishing what exactly was meant by "control" in the Organic Acts was no assurance that later administrations would not take another stance on the matter; so in fact there could be changes with latter administrations.³

If for these, or other unknown reasons, the fact is that the President did not issue any proclamation with respect to the issue which had been put before him. Once again the Puerto Rican government took its major drive to Congress, this time some Senators were contacted, among others, by Luis A. Ferré, former Governor of Puerto Rico, and it was the Energy and Conservation Committee of the Senate, formerly the Insular and Territorial Committee, who addressed the issue.

Why did the Committee take up the issue? We have to place the dynamics of this process in the fact that 1980 is election year. Like the previous administration, the present pro-statehood government in Puerto Rico has its allies in the United States government. The reasons given by committee personnel is that there was no contradiction between giving Puerto Rico right to three marine leagues, and the fact that some continental states had to go to court to gain that control. In fact, precisely because there were plenty of historical legal background, Puerto Rico could be spared the legal costs of a lengthy court case. The arguments presented about Puerto Rico's historical right were well constructed and seemed logical.

³Information gathered from the interview with Jim Berney, Staff member, Energy and Conservation Committee, Senate, Washington, DC.

The Committee decided to include Puerto Rico's petition in their Omnibus Territories Legislation, Report No. 96-467 because of the "speed and urgency" which was needed.⁴ The original bill H.R. 7827 had been presented at the 1st Session of the 95th Congress, quite some time before. The "speed and urgency" can be translated into more meaningful words: Primaries.

The governor of Puerto Rico had not publicly taken sides with the Democratic candidates. Although he has stated he is a Republican, everyone knew he would back James Carter because Ted Kennedy is a pro-commonwealth man and Ronald Regan was seen with few possibilities. But Carlos Romero was not about to give his support for nothing, so they exchanged "goods". The Senate approved its Report No. 96-467, the House passed bill H.R. 3756 on February 28, 1980, the President signed the bill on March 12, 1980 and Democratic primaries were held March 16, 1980. Carlos Romero had finally said he was formally supporting Carter for reelection.

Puerto Rico, as of March 12, 1980, has a right to a territorial sea of three marine leagues. Section 606 of H.R. 3756 reads:

(a) Section 8 of the Act of March 2, 1917 ("Jones Act"), as amended (48 U.S.C. 749), is amended by adding the following after the last sentence thereof: "Notwithstanding any other provision of law, as used in this section (1) 'submerged lands underlying navigable bodies of water' include lands permanently or periodically covered by tidal waters up to but not above the line of mean high tide, all lands underlying the navigable bodies of water in and around the island of Puerto Rico and the adjacent islands, and all artificially made, filled in, or reclaimed lands which formerly were lands beneath navigable bodies of water; (2) 'navigable bodies of water and submerged lands underlying the same in and around the island of Puerto Rico and the adjacent islands and waters' extend from the coastline of the island of Puerto Rico and the adjacent islands as heretofore or hereafter modified by accretion, erosion, or

⁴Ibid.

reliction, seaward to a distance of three marine leagues; (3) 'control' includes all right, title, and interest in and to and jurisdiction and authority over the submerged lands underlying the harbor areas and navigable streams and bodies of water in and around the island of Puerto Rico and the adjacent islands and water, and the natural resources underlying such submerged lands and waters, and includes proprietary rights of ownership, and the rights of management, administration, leasing, use, and development of such natural resources and submerged lands beneath such waters.

(b) Section 7 of the Act of March 2, 1917 (Jones Act"), as amended (48 U.S.C. 747), is amended by adding the following after the last sentence thereof: "Notwithstanding any other provision of law, as used in this section 'control' includes all right, title, and interest in and to and jurisdiction and authority over the aforesaid property and includes proprietary rights of ownership and the rights of management, administration, leasing, use, and development of such property.

As we mentioned in the very beginning, Puerto Rico's interest in defining its authority over the territorial sea is based on the possibility of finding hydrocarbon deposits. These resources are seen as the alternative the Puerto Rican economy has, to ease from a federal funds dependent economy to a self-sustaining statehood economy.⁵ What the potential estimate and the possibilities for development are we will see shortly.

B. Hydrocarbons and Economic Development

Potential oil and natural gas traps were discovered in Puerto Rico in 1973. The discovery was a by-product of seismological and geological studies made to locate areas for the construction of nuclear plants to generate electricity. The studies were made by Fugro and Western Geophysical two United States companies under contract by the Puerto Rico Water Resources Authority (now the Energy Authority). Around seven million dollars were

⁵See Sotomayor's article, where possible hydrocarbon deposits are seen as facilitating statehood. Jim Berney is of the same opinion.

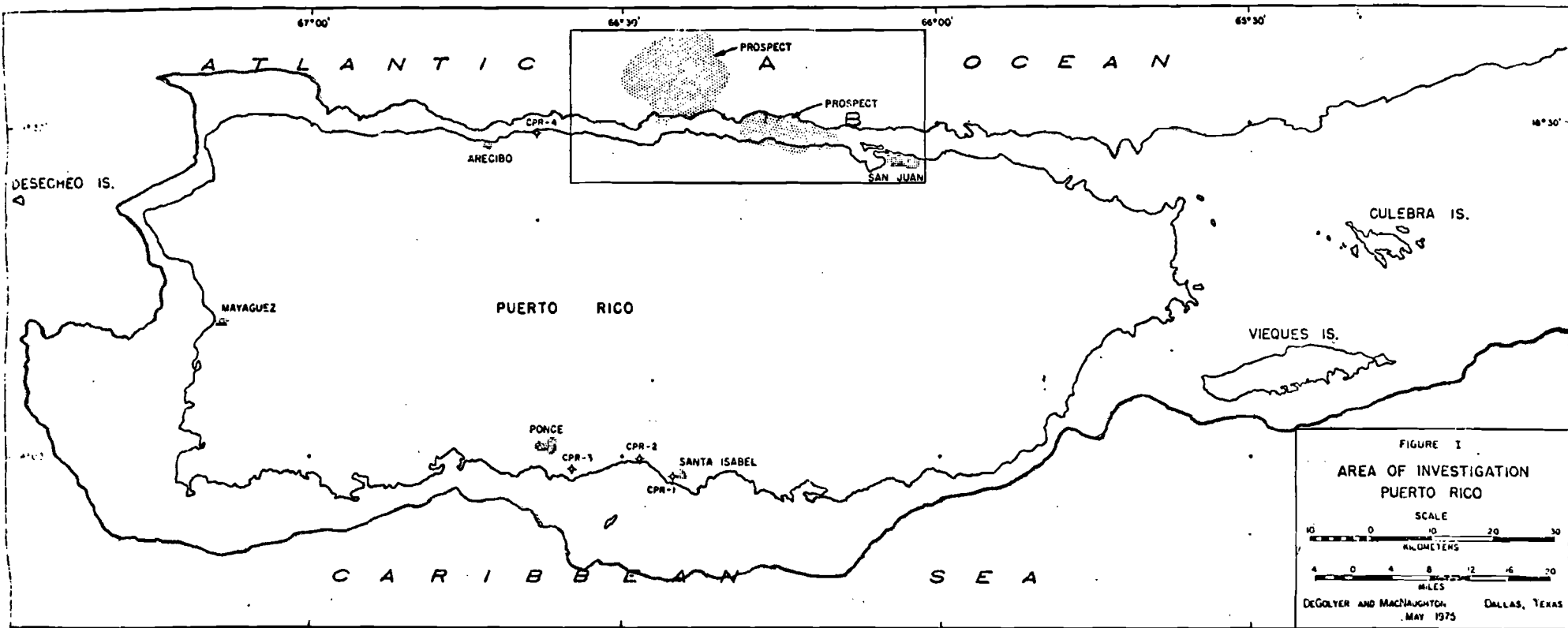
used by this agency to conduct these studies, which lasted more than a year and a half.

The seismological studies undertaken up to the present show the presence of two potential hydrocarbon traps--one in Tortuguero (Prospect A) offshore and one in Dorado (Prospect B) off shore that quite probably extends on shore (See Map 2). Both potential traps are located west of San Juan, in the north-central region. A third potential trap could be located off shore, north-northeast of the Old San Juan area, possibly extending below the city and the San Juan Bay.

Degolyer and McNaughton, an American oil firm, estimates that between four and six billion barrels of recoverable oil could be present in the Dorado and Tortuguero regions. Approximately \$10 million additional investment is needed to complete the exploratory phase, including drilling. This is around one twenty-fifth of one percent (0.25%) of the general annual budget of the Puerto Rican government.

After denying the existence of the original studies and later the possibility of hydrocarbon deposits, the Puerto Rican government has been forced, by politically motivated pressure groups, to carry out the exploration phase of the search for the hydrocarbons. The big oil companies, like Mobil and Texaco, having lost the first battle are now trying to convince the Puerto Rican government to give them control of oil exploitation on shore (where Puerto Rico will do the exploration), and oil exploration and exploitation off shore. Their main argument is that Puerto Rico lacks economic, technological and human resources to explore and exploit its natural resources.

The way the government chooses to tackle this problem will take Puerto Rico on a path towards development or towards becoming relatively poorer



as our natural resources are controlled by the big oil companies. Puerto Rico, at the present time, does not have the technological capacity to undertake exploration and exploitation of its hydrocarbon deposits, if some exist, but surely if we used taxpayers' money to train our people to provide skilled labor for American industrialists in the past, we can again train Puerto Ricans in the necessary skills for this endeavor. This of course takes time, and although Puerto Ricans can afford some time the Puerto Rican government is trying to bring statehood as soon as possible.

Rapid development of these resources is essential for the government's strategy. One of the main conclusions of the Krepps Report is that Puerto Rican economy shows acute economic contradictions at the structural level and to that can be added the logical conclusion that something has to be done soon to keep social forces from erupting.

The Puerto Rican government is counting on a modernization of agriculture, the exploitation of copper, gold and silver deposits, nickel, cobalt deposits and especially the exploitation of oil and natural gas to reduce the Puerto Rican dependence on food stamps and federal handouts in general. It is doubtful that the U.S. government is willing to continue footing the bill for Puerto Rico for a long period of time. "Whether the recent high level of transfer payments is sustainable and desirable over the long run is questionable."⁶

⁶United States Department of Commerce, Economic Study of Puerto Rico, Report to the President prepared by the Interagency Task Force, (Krepps Report), December 1979, Vol. I, p. 6.

VI. PUERTO RICO AND THE INTERNATIONAL ORDER

Like we said before, under the commonwealth status, Puerto Rico is not allowed by the American government to engage in international relations. The basis for this lies in Article I, Section 10 of the U.S. Constitution which states:

No state shall, without the consent of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power.

Here again, those who would want Puerto to control its own foreign relations, question the validity of this provision as applied to Puerto Rico. How Puerto Rico was to deal with this matter was not expressly decided with the Commonwealth Constitution; it is therefore one of the issues which still has to be clearly defined.

There is . . . nothing in American Constitutional or federal theory which would preclude Puerto Rico from its rightful role in the world. The specific allocation of foreign affairs power between the commonwealth and the federal government was not authentically decided in the establishment of the commonwealth. It will be determined through time by references to general principles of international law, authoritative domestic policies, the political needs of the parties and the good faith negotiations . . .¹

Those who advocate Puerto Rico's independence in foreign relations, which is not limited to "independentistas," understand that Puerto Rico is not integrated to the United States and that in fact it has interests which are very different from the United States. The interests of the two

¹Michael Reisman, Puerto Rico and the International Process: New Roles in Association (West Publishing Company, 1975), p. 42.

countries are in fact in contradiction most of the time because the United States leads the Western developed world, while Puerto Rico would better defend its interests in alliance with underdeveloped countries. It has in fact much more in common with Latin American countries, especially its Caribbean neighbors.

Puerto Rico has, at intervals when it has received authority to do so from the United States, participated in some international organizations like the Economic Conference of Latin America, the United Nations Conference of Trade and Development, the United Nations Industrial Development Organization and the Caribbean Economic Development Corporation. Puerto Rico, as well as some of its governmental officials, have been used at times by the United States to represent its own interests, has happen with the Alliance for Progress.

Puerto Rico has assisted randomly to the United Nations Conferences on the Law of the Sea; at all times as part of the United States delegation. After realizing the existing contradiction, the Puerto Rican government sought to acquire observer status at the Conference to which the State Department responded:

We believe that the question of Puerto Rico's rights to offshore resources should be addressed within the context of the United States-Puerto Rico relations rather than at a major international treaty-negotiating conference, such as the Law of the Sea Conference.²

The truth of the matter is that the United States delegation cannot adequately represent the interests of Puerto Rico when its primary objectives deal with naval power, international straits and research. Puerto

²Charles W. Robinson, Acting Secretary of State, to Governor Rafael Hernández Colón, 17 September 1976.

Rico does not have submarines which want to travel freely, nor does it want to collect scientific information off the coasts of other states. Puerto Rico's main concern is to guarantee that countries like the United States will not keep Puerto Rico's resources from its rightful owners, and to insure provisions which will protect the oceans resources for the "benefit of all."

On the other hand, the United States is a sole exception which has neither accorded the commonwealth full participation in the national law making process nor has it delegated to it the jurisdiction over its 200 mile zone. The general rule is that metropolitan powers with integrated overseas territories or associated states either have given the population of the overseas territory full and equal representation in the national parliament and government or have given the local government jurisdiction over the mineral resources and fisheries of the exclusive economic zone.³

³Tomas M. Frank, Control of Sea Resources by Semi-Autonomous States, Carnegie Endowment for International Peace, 1978, p. 5.

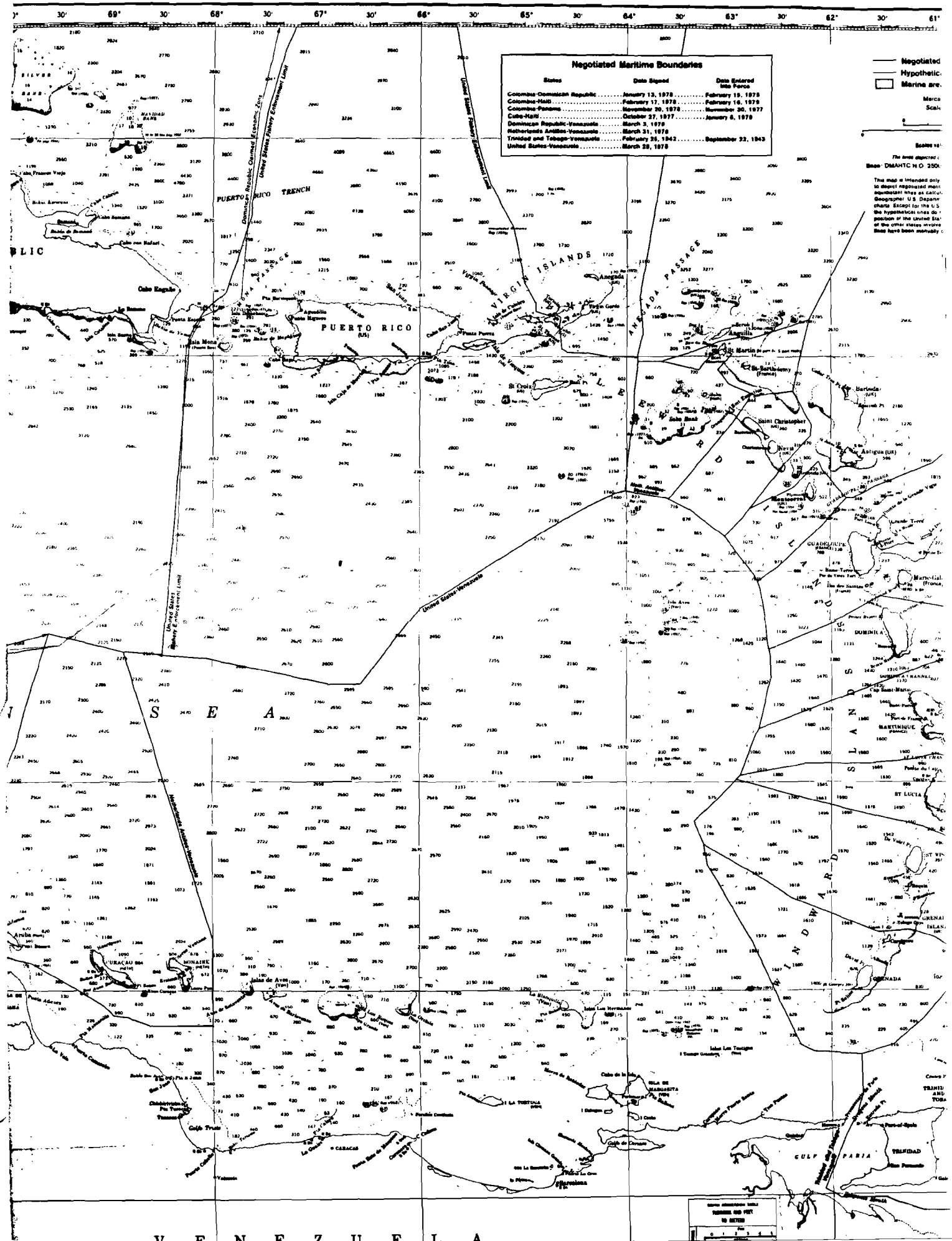
VII. CONCLUSIONS

By having its right to a territorial sea determined by Congress, the present Puerto Rican government has in fact forfeited Puerto Rico's right to a territorial sea of twelve miles and an exclusive economic zone of 200 miles. Seeking the approval of Congress for something Puerto Rico had always controlled shifts the source of power from the Puerto Rican government to the U.S. Congress. The rationale behind this action is that Puerto Rico could not ask Congress for recognition of a greater maritime jurisdiction than any of the other states had achieved. What in fact this premise does not consider is that the states of Florida and Texas did not develop their maritime control, before entering the union, to the extent that Puerto Rico has. In the second place, not being a state of the union, Puerto Rico did not have to follow the same pattern. Of course, like we have said, fitting the Puerto Rican situation in this same pattern would bring it closer to achieving, with less difficulty, its acceptance as a state; or so think the pro-statehooders. In the third place, this action takes no account of the fact that Spain's claim at the time, was based on international customary law and that sufficient flexibility was provided in the Law of Ports of 1876, to accommodate future changes of the international practice.

The world no longer seeks control of just two or three maritime leagues. Today, accepted claims are twelve miles of territorial sea and 200 miles of an exclusive economic zone. The Puerto Rican government has limited its own right to what is historically a right of the Puerto Rican

people. The alternative would have been to claim the current acceptable limits and to proceed with the exploration and exploitation of its natural resources. The United States government would have then been forced to either accept the claim or proceed to seek court action to stop Puerto Rico's appropriation of what is rightfully theirs. This of course, is an alternative for people who do not suffer from a colonialist inferiority complex and who do not see Puerto Rico's existence inevitably dependent on the United States. Puerto Rico has, in the past, been able to achieve international solidarity and as time passes more countries understand the colonial relations between the United States and Puerto Rico. The United States on the other hand, is very conscious of its projection as a colonial power in some international fora. Puerto Rico's right could have been assured because in the long run United States interests are better served if it does not appear as a giant wanting to rob 3 million people of their economic development. (See Map #3, Puerto Rico's maritime boundaries.)

As has been explained in some detail, Puerto Rican economy needs real development efforts and everyone is depending on the hydrocarbon and natural gas deposits as one of the main components for this development. By the positions the present Puerto Rican government has taken, it is still to be seen whether these resources will eventually lead to balancing the economy. The government continuously argues that Puerto Rico does not have the economic, human and technological resources to develop an oil industry. This type of reasoning will lead Puerto Rico into giving away these resources to private oil companies like Mobil and Exxon, while the world tendency is to rescue important resources from transnationals for national development. Like Third World countries have learned, there is no real development when transnationals control our resources to their benefit. Puerto Rico, if it were not so heavily colonized into believing



their own incapacity would have also learned this lesson from its past economic relations with United States companies. No country has been able to achieve development by importing capital and exporting raw materials and profits. In the 20th century these countries have realized that development depends on the industrialization of their resources. This is the lesson that the Puerto Rican people still have to learn. Let those who have the technology sell or lease it while Puerto Rico develops its own; let Puerto Ricans learn as others in Mexico, Venezuela and the Middle East have done.

This inevitably leads us to Puerto Rico's political relation to the United States. The historic development of this relation as well as its contradictions have been clearly exposed and there is only one alternative; change. The great majority of Puerto Ricans support political parties which expect to change the actual relations; whether through statehood, autonomy or independence. Statehood would not only inhibit real economic development but would also increase economic dependence on American capital and the transfer of federal funds from the North American taxpayer. Ultimately, this process would culminate in the absorption of the Puerto Rican economy, society and culture by the United States.

Real autonomy, although difficult to achieve, would eventually lead to an independence process because of the gradual awareness Puerto Ricans would develop as to their capacity to control their own reality. Thus, in the medium or long range, independence is the only real alternative to the solution of Puerto Rico's problems and contradictions.

BIBLIOGRAPHY

A. Books and Articles

Agraít, Luis E. "Puerto Rico y la Tercera Conferencia de las Naciones Unidas Sobre el Derecho del Mar." Revista Jurídica de la Universidad de P.R., XLVII: 1-2, agosto 1978, pp. 24-51.

"An Act to Authorize Appropriation for Certain Insular Areas of the United States, and for Other Purposes." H.R. 3756, 96th Congress, 1st Session, May 9, 1979.

Bacardí, Alejandro. Diccionario del Derecho Marítimo de España, Barcelona, 1861, p. 263.

Bhana, Surendra. The United States and the Development of the Puerto Rican Status Question, 1936-1968. Press of Kansas, 1975.

Bowett, Derek W. The Legal Regime of Islands in International Law. Dobbs Ferry, New York: Oceana Publications, Inc., 1979.

Cabranes, José A. "Puerto Rico: Out of the Colonial Closet." Foreign Policy, No. 33, Winter 1978, pp. 66-91.

Coleman, Lynn. "Brief in Support of Puerto Rico's Right to Authorize Exploration for and Development of Minerals in Offshore Submerged Lands, 1977. Mimeograph, 60 pp.

"Compact of Permanent Union Between Puerto Rico and the United States." Hearing Before the Committee on Interior and Insular Affairs, U.S. Senate, 94th Congress, 1st Session, December 3, 1975, pp. 615-623.

"Compact of Permanent Union Between Puerto Rico and the United States." Hearing Before the Subcommittee on Territorial and Insular Affairs of the Committee on Interior and Insular Affairs, House of Representatives, Bill H.R. 11200, 94th Congress, 2nd Session. Part I: January 20, 1976 and February 9, 1976. Part II: March 20 and 21, 1976.

"Compact of Permanent Union Between Puerto Rico and the United States." Original proposal presented at the Hearing Before the Committee on Interior and Insular Affairs, U.S. Senate, 94th Congress, 1st Session, December 3, 1975, pp. 73-79.

"Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America." Pub. Law 94-241, Mar. 24, 1976, 90 Stat. 263. United States Code Annotated, Title 48: Territories and Insular Possessions, pp. 216-227.

Darman, Richard. "The Law of the Sea: Rethinking U.S. Interests." Foreign Affairs, January 1978, pp. 373-395.

Diccionario de la Administración Española; Compilación de la Novísima Legislación de España, Tomo I, pp. 467-495; Tomo XII, pp. 777-785, Madrid, 1914.

Fernós, Antonio. "Derecho del Pueblo de Puerto Rico Sobre su Mar Territorial, Sobre sus Terrenos Sumergidos, sus Recursos Naturales, y Sobre su Plataforma Continental." Revista del Colegio de Abogados, Vol. 38: 4, noviembre 1977, pp. 455-483.

_____. "Impacto sobre Puerto Rico de la Tercera Conferencia de las Naciones Unidas Sobre el Derecho del Mar." Revista Jurídica de la U.P.R., 47: 1-2, agosto 1978, pp. 53-67.

Flint, Jerry. "Puerto Rico's not-so-manifest destiny." Forbes, August 6, 1979, pp. 47-48.

Frank, Tomas M. Control of Sea Resources by Semi-Autonomous States. Carnegie Endowment for International Peace, 1978.

García, Neftalí. "Perspectivas de las Exploración Petrolera." 13 de junio, 1979. 7 pp. (Mimeograph)

_____. "Puerto Rico Siglo XX: Lo Histórico y lo Natural en la Ideología Colonialista." Pensamiento Crítico, Num. 8, septiembre de 1978. 28 pp.

_____. "Summary of the Economic and Political Development in Oil Exploration in Puerto Rico, 1975-1979." Corporate Examiner, September, 1979. (In Press)

Gentili, Alberico. Hispanical Advocationis Libri Uso the Classics of International Law. Ed. James Brown, Oxford Univ. Press, 1921, Vol. II, pp. 157-203.

"Geological and Geophysical Interpretation of the Exclusive Exploration Permit Area Southwestern Coastal Region." Oceanic Exploration Comp. for the Commonwealth of Puerto Rico, May, 1974.

Guam, Virgin Islands, American Samoa-Land Jurisdiction, Public Law 93-435, 88 Stat. 1210, Laws of 93rd Cong.--2nd Sess., pp. 1379-1382.

Jurisdiction of Submerged Lands: Guam, the Virgin Islands and American Samoa. Hearing Before the Subcommittee on Territorial and Insular Affairs of the Committee on Interior and Insular Affairs, House of Representatives, 93rd Congress, 1st session, Sept. 25, 1973.

Knauss, John A. "Factors Influencing a U.S. Position in a Future Law of the Sea Conference." Occasional Paper No. 10. Law of the Sea Institute, URI, 1971, 33 pp.

- Laureano, Sandra M. "Puerto Rico and its Marine Jurisdiction." Paper prepared to fulfill partial requirements for International Ocean Law course, December 1979. 26 pp.
- Leibowitz, Arnold H. "The Applicability of Federal Law to the Commonwealth of Puerto Rico." The Georgetown Law Journal, Vol. 56, No. 2, December 1967, pp. 219-271.
- Linsley, Austin. "U.S.-Cuban Relations: The Role of Puerto Rico." Cuba in the World. Pittsburg Latin American Series, Univ. of Pittsburg Press, 1979, Cole Blasier (ed.).
- "Mining Law," as revised by Law No. 9, August 18, 1933. Laws of Puerto Rico, Vol. No. 32, pp. 32-61.
- "Mining Law," as revised by Law No. 243, March 29, 1946. Laws of Puerto Rico, Vol. No. 32, pp. 480-485.
- "Mining Law," as revised by Law No. 426, May 15, 1950. Laws of Puerto Rico, Vol. No. 32, pp. 1032-1037.
- "Mining Law," as revised by Law No. 10, October 10, 1975. (Mimeographed copy.)
- "Mining Law," as revised by Law No. , June 8, 1979. (Mimeographed copy.)
- Nickel, Herman. "Puerto Rico's Drift Toward Statehood--and Dependence." Fortune, August 13, 1979, pp. 163-176.
- Omnibus Territories Legislation, Report No. 96-467. Committee on Energy and Natural Resources, U.S. Senate, 96th Congress, 1st Session, December 7, 1979.
- Passalacqua, Luis A. "El derecho del mar y el uso de recursos marinos." Conferencia dictada en Colegio Universitario de Humacao, 21 de marzo 1979.
- _____. "Puerto Rico ante el Derecho del Mar: ¿Poniente o Saliente?" Revista Jurídica de la U.P.R., 42: 1-2 agosto 1978, pp. 1-23.
- Peoples Press Puerto Rico Project. Puerto Rico, The Flame of Resistance. San Francisco: Peoples Press, 1977.
- "Placing Certain Submerged Lands Within the Jurisdiction of the Governments of Guam, the Virgin Islands and American Samoa, and for Other Purposes." House of Representatives Report No. 93-902, 93rd Congress, 2nd Session, March 12, 1974.
- "Providing Authorization for the Civil Government for the Trust Territory of the Pacific Island." Hearing Before the Committee on Interior and Insular Affairs, U.S. Senate, 94th Congress, 1st Session, July 23, 1975.

"Puerto Rico, A Question of Changing Status." Latin America, X: 36, Sept. 1976, pp. 281-282.

"Puerto Rico Federal Relations Act." Hearing Before the Committee on Interior and Insular Affairs, U.S. Senate, 94th Congress, 2nd Session, April 12, 1976.

"Puerto Rico: Uneasy Permanent Union." Latin America, X: 26, July 1976.

Reisman, Michael. Puerto Rico and the International Process: New Roles in Association. West Publishing Company, 1975.

Sotomayor, Sonia. "Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights." The Yale Law Journal, 88: 4, March 1979, pp. 825-849.

"Submerged Lands Legislation Affecting Guam, the Virgin Islands and American Samoa." Hearings Before Subcommittee on Territories and Insular Affairs of the Committee on Interior and Insular Affairs, U.S. Senate, 93rd Congress, 2nd Session, June 19, 1974.

Svendsen, Eric. "Puerto Rico Libre." Open Forum, Num. 20, Spring/Summer 1979, pp. 21-27.

"The Right of the People of Puerto Rico to Puerto Rico's Territorial Waters, its Submerged Lands, and its Continental Shelf." Report prepared by the Commission on International Law of the Puerto Rico Bar Association, 1978.

"The Submerged Lands Act." Public Law 31, May 22, 1953, H.R. 4198.

"The Vested Rights of the Commonwealth of Puerto Rico to Authorize Exploration and Development of Minerals Underlying its Offshore Submerged Lands." Memorandum from the Puerto Rican Government to the U.S. Government. Prepared by John A. Hodges and Peter B. Archie on September 19, 1977, 45 pp.

United States Code Annotated, Title 48: Territories and Insular Possessions. Chapter 4--Puerto Rico § 731, 731b, 731c, 731d, pp. 89-91.

United States Department of Commerce. Economic Study of Puerto Rico, Report to the President prepared by the Interagency Task Force. (Krepps Report), December, 1979, Vol. I and II.

"U.S. Government Documents: House and Senate Hearings Briefing on Territorial Matters." Hearings Before the Subcommittee on Territories and Insular Affairs on the Committee on Interior and Insular Affairs, U.S. Senate, 93rd Congress, 1st Session, January 29, 1973.

B. Interviews

Alexander, L. Geographer. State Department, Washington, DC. Interview. February 29, 1980.

Berney, J. Staff Member. Energy and Conservation Committee, Senate, Washington, D.C. Interview. February 29, 1980.

Bowles, R. Office of Territories and Possessions, Department of Interior, Washington, D.C. Interview. February 29, 1980.

Méndez, A. Attorney-Advisor. Puerto Rico Federal Affairs Administration (Office of the Commonwealth in Washington), Washington, DC. Interview. March 1, 1980.

Rodríguez, Ana M. Legal Counsel. Office of the Puerto Rican Resident Commissioner, House of Representatives, Washington, D.C. Interview. February 29, 1980.

C. NEWSPAPER ARTICLES*

*These are some of the most important articles although over 100 newspaper articles were read as the issue developed.

"Carter Complacido con Firma Ley 10.35 Millas." El Mundo, 13 de marzo de 1980, p. 7-A.

"Carter Cries 'Viva'." New York Times, March 29, 1978, p. 1.

"Freeing Puerto Rico." New York Times, May 25, 1978, p. A-23.

Lewis, Gregg. "Another Look at Puerto Rico and the United Nations." Caribbean Business, September 28, 1978, p. 9.

Misión Industrial, News Conference on U.S. Response to International Pressure. San Juan Star, February 7, 1979, p. 6.

"Offshore Oil Issue Raised in Puerto Rico Proposal." Washington Post, February 9, 1976, p. A-2.

"Puerto Rico's Ex-governor Hints Statehood Plans Linked to Oil." Washington Post, January 7, 1977, p. 8.

"Puerto Rico Unico País Asociado que No Participa in Negociaciones del Mar." El Mundo, 31 de agosto de 1978, p. 5-A.

"Revising Puerto Rican Status Likely to be Touchy Hill Issue." Washington Post, February 9, 1976, p. A-2.

Skelly, John T. "A Carter en Pos de las Tres Leguas." El Nuevo Dia, 28 de febero de 1979, p. 5.

"The Wall Street Journal Apoya la Estadidad," El Nuevo Dia, 19 de octubre de 1979, p. 6.

Turner, Harry. "OMB Deals a Serious Blow to Puerto Rico's Offshore Limit Bid." San Juan Star, February 15, 1978, p. 1.

D. LETTERS*

*This list includes only a partial list of the 56 letters received by Misión Industrial, under the Freedom of Information Act, from the Executive Office of the President, pertaining to Puerto Rico's offshore limit jurisdiction and petroleum related resources. The letters cover a period from June 1975 - November 1978.

Andrus, Cecil D., Secretary, Dept. of Interior to Bennet Johnston, U.S. Senate, Re: H.R. 7827.

Bauerlein, Robert D. and Cutler, Eliot R. to Director, Executive Office of the President, Office of Management and Budget, May 16, 1978, Re: The Submerged Lands Act of 1953 and the Jurisdiction of Puerto Rico.

Bonnet, Douglas J., Assistant Secretary for Congressional Relations, Dept. of State to Bennet Johnston, U.S. Senate, Re: H.R. 7827.

Gabbert, J. Stephen, Executive Vice President, The Rice Miller's Association to Phillip Burton, Chairman, Subcommittee on Territorial and Insular Affairs, Senate, February 11, 1976, Re: H.R. 11200.

Latisch, L. C., Captain of U.S. Navy to James D. McIntyre, Director of OMB, March 23, 1978, Re: H.R. 7827.

Méndez, Ariel, Attorney-Advisor, Puerto Rico Federal Affairs Administration to Emma Navajas, Director, Legal Counsel Div., Puerto Rico F.A.A., August 20, 1979, Re: Trailer Marine Transport Corp. v. Federal Maritime Commission and United States of America, Docket # 78-1307.

Misión Industrial de Puerto Rico to Salim Ahmed Salim, President, Decolonization Committee, U.N.O., August 14, 1978, Re: Puerto Rico's Maritime Rights.

Romero, Carlos, Governor of Puerto Rico to President James Carter, January 18, 1978, Re: Justification for H.R. 7827.

Secretary of the Interior, Dept. of the Interior to James A. Haley, Chairman, Committee on Interior and Insular Affairs, H.R., January 20, 1976, Re: H.R. 11200.

Wald, Patricia M., Asst. Attorney General to Morris K. Udall, Chairman, Committee of Interior and Insular Affairs, May 10, 1978, Re: H.R. 7827.